

## Remarks

Claims 1-9 and 38-56 are pending.

### 1. *Double Patenting*

Claims 1-4 and 6-9 stand rejected under the judicially-created doctrine of obviousness-type double patenting as being unpatentable over claims 1-4 and 8-16 of U.S. Patent No. 6,689,941. *Final Action* at page 3.

It is noted that the filing of a terminal disclaimer to obviate a rejection based on obviousness-type double patenting is not an admission of the propriety of the rejection. *See, e.g., Quad Environmental Technologies Corp. v. Union Sanitary District*, 946 F.2d 870 (Fed. Cir. 1991) (“filing of a terminal disclaimer simply serves the statutory function of removing the rejection of double patenting, and raises neither a presumption nor estoppel on the merits of the rejection”).

In light of the terminal disclaimer filed herewith, the obviousness-type double patenting rejection is now moot, and should be withdrawn.

### 2. *Rejections under 35 U.S.C. § 112, first paragraph, Enablement*

The Examiner alleges that the “deposit information is incomplete as there is no reference regarding the criteria set forth in 37 C.F.R. 1.801-1.809 or any statement by an attorney of record over his or her signature and [registration] number showing that the conditions of (a)-(e) on page 9 of the previous Office Action mailed August 25, 2005.”

*Final Action* at page 6.

Applicants state that: a) during the pendency of this application, access to the invention will be afforded to the Commissioner upon request; b) all restrictions upon availability to the public will be irrevocably removed upon granting of a patent; c) the deposit will be maintained in a public depository for a period of 30 years or 5 years after the last request or for the enforceable life of the patent, whichever is longer; d) a test of the viability of the biological material at the time of the deposit; and e) the deposit will be replaced if it should ever become inviable.

Accordingly, the rejection of the claims for lack of a deposit statement should be withdrawn.

## CONCLUSION

In view of the foregoing remarks, each of the presently pending claims is believed to be in immediate condition for allowance or in better condition for appeal. The Examiner is encouraged to contact the undersigned at 202.942.5000 should any additional information be necessary for allowance.

Respectfully submitted,



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Thomas E. Holsten (Reg. No. 46,098)  
David R. Marsh (Reg. No. 41,408)

Arnold & Porter LLP  
555 Twelfth Street, N.W.  
Washington, DC 20004  
Tel: 202-942-5000  
Fax: 202-942-5999